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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,993	07/08/2005	Markus Matuschek	13311-00010-US	1427
23416 7590 10/09/2007 CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899			EXAMINER JOIKE, MICHELE K	
			ART UNIT 1636	PAPER NUMBER
			MAIL DATE 10/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,993

Applicant(s)

MATUSCHEK ET AL.

Examiner

Michele K. Joike, Ph.D.

Art Unit

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-41 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group 1, claim(s) 1-23, 26, 27, 30-37, 39-41, drawn to a method for producing a genetically modified organism of the *Blakeslea* genus, a promoter and the vector comprising SEQ ID NO: 3, and a genetically modified cell, and a method for producing carotenoids, carotenes or xanthophylls.

Group 2, claim(s) 1-12, 14-24, 26, 27, 30-36, 38-41, drawn to a method for producing a genetically modified organism of the *Blakeslea* genus, a promoter and the vectors comprising SEQ ID NO: 70, 71 and 76, and a genetically modified cell, and a method for producing carotenoids, carotenes or xanthophylls.

Group 3, claim(s) 1-12, 14-24, 26, 27, 30-36, 38-41, drawn to a method for producing a genetically modified organism of the *Blakeslea* genus, a promoter and the vector comprising SEQ ID NO: 72, and a genetically modified cell, and a method for producing carotenoids, carotenes or xanthophylls.

Groups 4-18, claim(s) 1-12, 14-23, 25-27, 30-36, 39-41, drawn to a method for producing a genetically modified organism of the *Blakeslea* genus, a promoter and the vector comprising SEQ ID NO: 37-51. Note: Each Group contains a separate vector, i.e., Group 4 comprises SEQ ID NO: 37, Group 5 comprises SEQ ID NO: 38, etc., and a genetically modified cell, and a method for producing carotenoids, carotenes or xanthophylls.

Group 19, claim(s) 1-12, 14-23, 26-28, 30-36, 38-41, drawn to a method for producing a genetically modified organism of the *Blakeslea* genus, a promoter and the vector comprising SEQ ID NO: 69, and a genetically modified cell, and a method for producing carotenoids, carotenes or xanthophylls.

Group 20, claim(s) 1-12, 14-23, 26-27, 29-36, 39-41, drawn to a method for producing a genetically modified organism of the *Blakeslea* genus, a promoter and the vector comprising SEQ ID NO: 62, and a genetically modified cell, and a method for producing carotenoids, carotenes or xanthophylls.

The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The special technical feature of Groups 1-20 is the vector used in the method for producing a genetically modified organism of the *Blakeslea* genus. This special technical feature differs among the Groups because it represents a method of producing a host organism composed of different nucleic acid sequences. Each vector is biochemically and structurally different from each other. Therefore, each produced organism will have a different genetic make-up.

Because of the reasons set forth above, the inventions have different special technical features and are therefore patentably distinct.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1:48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele K. Joike, Ph.D. whose telephone number is 571-272-5915. The examiner can normally be reached on M-F, 9:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach can be reached on 571-272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nancy T. Vogel/
Primary Examiner, 1636

Michele K Joike, Ph.D.
Examiner
Art Unit 1636